

Amendments to the Drawings:

Applicants hereby submit and request approval of a set of photomicrographs on photographic paper, which are identical to the photomicrographs previously submitted on January 15, 2004 and July 28, 2004. The Replacement Sheets and Annotated Sheets Showing Changes, which are attached to the end of this paper, include changes to Figs. 5A, 5B, 6 and 7.

Attachment: Replacement Sheets
Annotated Sheets Showing Changes

REMARKS/ARGUMENTS

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-9 and 17-27 are presented for the Examiner's consideration. Claims 10-16 were previously canceled, and claim 28 is currently canceled.

The following response will address each of the Examiner's comments, objections and rejections in the order they were presented in the January 25, 2006 Office Action.

With respect to the drawings of the present application, the Examiner indicated that Figures 1F and 2A-2D have been approved. Applicants wish to thank the Examiner for approving these drawings.

The Examiner continues to require that the Applicants provide comments why the photomicrographs are necessary. As was stated in the amendment filed on January 3, 2006, Applicants are of the opinion that the photomicrographs are necessary to provide the best practical way for those skilled in the art to understand the present invention. The photomicrographs show the microstructure of the fastener and cooperating fastener of the present invention more clearly than can be done with drawings alone. As set forth in MPEP 608.02, "[t]he photographs or photomicrographs must show the invention more clearly than they {sic} can be done by India ink drawings ...". This is the case. The photomicrographs more clearly show the microstructure of the fastener and cooperating fastener of the present invention. For example, Figs. 6 and 7 show the microstructure of the cooperating fastener of claims 4 and 5. Fig. 5A and Fig. 5B show the relationship of the fasteners to one another in the engagement section. As a result, the public will be better served by having the photomicrographs in a published patent rather than drawings since the photomicrographs will allow those skilled in the art to better understand the invention as compared to drawings alone.

Further, similar photomicrographs have been allowed to remain in a patent application which matured into a patent (See for example, U.S. Patent 6,843,785). Therefore, there is precedent to have similar photomicrographs in patent applications and patents issuing from such patent applications.

Next the Examiner objects to Figs. 5A, 5B, 6 and 7 on the basis that descriptive text should be avoided. Applicants respectfully point out that corrected photomicrographs were

submitted with the amendment filed January 15, 2004. A second set of photomicrographs to replace the first set which the Examiner indicated had not been received by the PTO was submitted with the amendment of July 28, 2004. Applicants hereby submit, for a third time, a set of photomicrographs on photographic paper, which are identical to the photomicrographs, previously submitted on January 15, 2004 and July 28, 2004. Applicants respectfully remind the Examiner that the photomicrographs may be placed in an artifact folder associated with serial number 10/037,278, as is set forth in MPEP 608.02.

As can be seen, Figs. 5A, 5B, 6 and 7 as submitted herewith, and with the amendments of January 15, 2004 and July 28, 2004 clearly do not have any descriptive text. Therefore, Applicants respectfully request that the Examiner withdraw the objections to the drawings for the reasons set forth above.

Regarding the Examiner's claim interpretation, Applicants agree with the Examiner's claim interpretation with the exception of the Examiner's statement that "claims 17, 27 and 28 do not require the first fastener be capable of engaging fabric of the garment and the claim garment is not required to be a fabric". Applicant's point out that Claims 17 and 27 do require that "the unengaged first fastener component is in a position adjacent the backsheet layer so it is adapted to engage the undergarment positioned between the backsheet layer and the wings. If the Examiner's claim language interpretation is intended to mean that the undergarment is not required to be a fabric material, Applicants agree. If the Examiner's claim language interpretation is intended to mean that the unengaged fastener does not engage the undergarment, Applicants disagree with this claim language interpretation since this interpretation is contrary to the claim language. Applicants further note that the unengaged fastener is adapted to engage the undergarment (e.g. underwear or panties) and not the garment or clothing such as pants.

Claims 1-9 and 17-28 were rejected under 35 U.S.C. § 102(e), as allegedly being anticipated by Hammons et al., U.S. Patent Application Publication US2003/0004484. This rejection is again respectfully **traversed**.

As has been previously argued, Hammons et al. fail to anticipate claims of the present application, contrary to the Examiner's assertion. Specifically, Hammons et al. do not teach or suggest that **one of the first fasteners is unengaged with the cooperating fastener and the unengaged first fastener component is positioned adjacent the backsheet layer so it is**

adapted to engage the fabric of an undergarment., as is specified in claim 1 or **the unengaged first fastener component is in a position adjacent the backsheet layer so it is adapted to engage the undergarment positioned between the backsheet layer and the wings**, as specified in claims 17 and 27. Previously, Applicants have requested the Examiner to point out where Hammons et al. specifically teach this limitation. Applicants' undersigned representative has reviewed Hammons et al. and is unable to find where this limitation is taught.

In response to this specific request, Examiner reinvites the Applicants to review paragraphs 84-99, 107,108 and 121-123 of Hammons et al. The Examiner also point to the page 8, lines 2-5 of the March 16, 2005 Office Action where the Examiner states

"See also Figures 6-8 and paragraphs 121-123, i.e. the fastener component is the one fastener 102, 104 directly adjacent the exterior of the undergarment. It is noted that that both components i.e., the hooks and loops, include engagement members, see page 12, lines 11-12 of the instant specification".

The Examiner then concludes from these portions of Hammons et al. and the asserted fact that Hammons et al. teach that the engagement member engages the undergarment, since all of the claimed structure of the Applicants' claims are taught by Hammons et al, citing MPEP 2112.01.

Applicants respectfully point out that the portions cited by the Examiner, in particular Figs. 7-10 of Hammons et al., are directed to adhesive fasteners as the fastening mechanism, see paragraph 122 of Hammons et al. While Applicants would agree that Hammons et al. teach that mechanical fasteners may be used, Hammons et al. clearly suggest, by way of the description of the drawings, that adhesive fastening systems are preferred. For example, in the brief description of the drawings, the description of the top plan view of the sanitary napkin, Figs. 1, 7, 9, and 11 clearly describe the sanitary napkin as having an adhesive on the flaps as the fastening system. Regarding Fig. 6 of Hammons et al., Fig. 6 is essentially the napkin of Fig. 1 applied to a panty.

In order for the claims of the present application to be anticipated, the side of the wing or flap which will contact the undergarment must be capable of engaging the undergarment. This is clearly set forth in the quoted claim language above. There is no direction in Hammons et al. that would suggest to one skilled in the art to place a fastener component with a plurality of engagement members on the side of the wing or flap which will contact the undergarment.

Again, Applicants specifically request the Examiner point out where this is taught in Hammons et al.

The Examiner tries to avoid pointing this out in Hammons et al. by making the assertion that the hooks and loops include engagement members, citing a portion of a sentence appearing on page 12, lines 11-12 of the Applicants specification. Applicants respectfully point out that page 12, lines 9-12 of the present specification states

*"Such fastening systems typically include **engagement members having the form of a "hook" or hook-like, male component**, and include a cooperating "loop" or loop-like, female component which engages and releasably interconnects with the hook component."* (emphasis added).

It is rather clear from this passage that the engagement members are the hook or hook-like members and not the cooperating fastener component, as the Examiner asserts. The loop component or cooperating fastener component does not have engagement members, as the Examiner asserts. Therefore, the Examiner assertion is clearly incorrect and undermines a basis of the Examiner's inherency rejection, i.e., that the cooperating component has engagement members and all of the claimed structure is shown.

The bottom line is the Examiner has not clearly set forth how all of the claim limitations, and in particular that the engagement members of the first fastener component engage the undergarment of a user. Hence, Hammons et al. fail to disclose the invention as claimed and clearly cannot support a *prima facie* case of anticipation. That is, the disclosure of Hammons et al. fail to teach all of the claim limitations of the present claims, hence the rejection under 35 U.S.C. § 102(e) is untenable and needs to be withdrawn.

In order for the sanitary napkins of Hammons et al. to be able to engage the undergarment positioned between the wings and the backsheet, the fastener component with the engagement members must be placed on the wings or flaps on the side opposite the absorbent, so that when wrapped around the undergarment, as shown in Fig. 6 of Hammons et al., the engagement members will not contact the undergarment, contrary to the Applicants' previous statements. However, in the configurations of Hammons et al., purportedly having a first fastener component and a cooperating fastener component on both wings or flaps, i.e., those shown in Figs. 7-12 of Hammons et al., Hammons et al. fail to teach or suggest that the fastener with the plurality of engagement members should be located on a surface of the wing or flap which will come into contact with the undergarment, such that the engagement members

will engage the undergarment, in the description of these drawings. (See paragraphs [0121], [0122], and [0123]) In lack of such a teaching, Hammons et al. cannot anticipate the present claims.

To maintain this rejection, the Examiner needs to specifically and clearly point out how each and every claim limitation is met by Hammons et al., including the limitations set forth in the last phrase of the claim, regarding the claim limitation requiring that one of the first fasteners is adapted to engage the undergarment positioned between the wings of the sanitary napkin. As is set forth above, this limitation limits the location of the plurality of engagement members on the wings. Such a limitation is not taught or suggested by Hammons et al. Essentially, the Examiner's rejection, as stated in the numerous Office Actions, is Hammons et al. teach hook and loop fasteners may be located on the wings or flaps, therefore all of the limitation of the claims are inherent. This type of rejection is clearly an improper inherency rejection, unless the Examiner can establish that the structure of Hammons et al. with the hook and loop fasteners will engage the undergarment as the Applicants' claims clearly require.

Claims 1, 6-9, 17-18 and 24-28 were rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by Bien, U.S. Patent 5,704,929 and thus Mattingly, U.S. Patent 4,608,047. This rejection is respectfully **traversed**.

Bien fails to disclose the invention as claimed and cannot support a *prima facie* case of anticipation. While it might be argued that Bien discloses use of a mechanical fastening system on the wings of a sanitary napkin by its reference to Mattingly, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Applicants specifically request the Examiner to point out where Bien specifically teaches this limitation. Applicants' undersigned representative has reviewed Bien and is unable to find where this limitation is taught.

In the statement of the rejections, it is rather clear that the Examiner is reading more into the teachings of Mattingly than actually exist in Mattingly. Specifically, on page 5, paragraph 7 of the Office Action, the Examiner again repeats the rejection by stating:

"It is noted that portions of Mattingly are considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO [sic, VELCRO®] instead, i.e. the fastener components is the one fastener directly adjacent exterior [sic, the exterior] of the undergarment".

To support this statement, the Examiner relies on column 6, line 44 - column 7, line 5, column 2, lines 17-32 and column 8, lines 9-41 of Mattingly.

Applicants again point out that this statement is overly broad and goes beyond the teachings of Mattingly. Nothing in Mattingly suggests that the VELCRO® system can be used in a configuration shown in Fig. 10 of Mattingly. A careful review of the sections of Mattingly noted by the Examiner reveals the following:

1. Mattingly suggests that mechanical attachment means may be used, in addition to adhesive and cohesive means to attach the flaps to one another;
2. The cohesive means is shown in Fig. 10 of Mattingly; and
3. The mechanical means is shown in Fig. 11 of Mattingly.

Specifically, column 6, line 61 - column 7, line 5 states:

"Still other means for affixing the flaps in place will occur to those skilled in the art such as, for example, replacing the adhesive system with cohesive material, i.e., material capable of adhering to itself but not to other substrates. In this way both sides of the **flap may be coated with cohesive material 34' as illustrated in FIG. 10**, and no unique order of folding is required. This also carries the advantage that there is no adhesive applied to the outer crotch portion of the undergarment. In still another embodiment, **mating elements of hooks 35 and loops 35'**, the so-called Velcro binder system (Velcro is a trademark of Velcro USA, Inc.) may be employed. **This is illustrated in FIG. 11.**" (emphasis added)

Clearly, the above quoted passage, which the Examiner bases her rejection, teaches if a cohesive system is used, a cohesive should be used in the configuration shown in Fig.10 and if a Velcro® is used, Velcro® is used in the configuration of Fig.11. Nothing in Mattingly states or teaches that a Velcro® system can be used in the configuration of Fig.10, as the Examiner has stated or implied. Therefore, the Examiner's premise for the rejection based on Bien and Mattingly is unsupported by the actual teachings of Mattingly.

For this reason, not to mention that not all of the structure of the present claims is taught by Bien and Mattingly, as argued by the Examiner, the Examiner has not established a prima facie case of anticipation. In order for a rejection under 35 U.S.C. § 102 (b) to be tenable, all of

the limitations of the claims must be taught by a prior art reference. Since, the configuration of the fastener components, as claimed, are not taught by Bien (incorporating Mattingly), the rejection under 35 U.S.C. § 102(b) based on Bien is untenable and should be withdrawn.

In order for the claims of the present application to be anticipated, the side of the wing or flap which will contact the undergarment must be capable of engaging the undergarment. This is clearly set forth in the quoted claim language above (as set forth in the response to the rejection based on Hammons et al.). There is no direction in Bien or Mattingly that would suggest to one skilled in the art to place a fastener component with a plurality of engagement members on the side of the wing or flap which will contact the undergarment. Again, Applicant's specifically request that the Examiner point out where this is taught in Bien or Mattingly

Applicants again request that the Examiner withdraw this rejection or specifically point out where Bien or Mattingly teaches a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Again the Examiner addresses this claim limitation by stating that the limitation of the last phrase of each of the independent claims is inherent.

The Examiner tries to avoid pointing this out in Bien or Mattingly by making the assertion that the hooks and loops include engagement members, citing a portion of a sentence appearing on page 12, lines 11-12 of the Applicants' specification. Applicants respectfully point out that page 12, lines 9-12 of the present specification states

*"Such fastening systems typically include **engagement members having the form of a "hook" or hook-like, male component**, and include a cooperating "loop" or loop-like, female component which engages and releasably interconnects with the hook component." (emphasis added).*

It is rather clear from this passage that the engagement members are the hook or hook-like members and not the cooperating fastener component, as the Examiner asserts. The loop component or cooperating fastener component does not have engagement members, as the Examiner asserts. Therefore, the Examiner assertion is clearly incorrect and undermines a basis of the Examiner's inherency rejection, i.e., that the cooperating component has engagement members and all of the claimed structure is shown.

Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over Bien, U.S. Patent 5,704,929 in view of Leak et al. U.S. Patent 5,763,041. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

As is noted above, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Leak et al. fail to cure this fatal deficiency of Bien.

As the Applicants have continually pointed out, which the Examiner has yet to refute, Leak et al. is directed to laminates suited for use as the loop components of hook and loop fasteners. According to Leak et al., a conventional separate, discrete patch of loop material is undesirable. See Leak et al. at col. 9, lines 15-22. While it might be argued that Leak et al. teach that its laminate can be used as a loop component anywhere hook and loop fasteners are employed, Leak et al. specifically teach replacing a conventional, discrete patch of loop material such as taught by Mattingly with a laminate that forms the outer cover of a diaper to provide engagement at any location on the outer surface of the diaper. However, Leak et al. fail to suggest having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet.

In order for a combination of references to establish a prima facie case of obviousness, the combination of references must teach the invention, as a whole, including all of the limitations of the claims. See In re Royka, 180 USPQ 580 (CCPA 1974). If a given combination of references does not anticipate, in the case of Bien and Mattingly as discussed above, or render obvious, in the case of Bien and Mattingly combined with Leak et al., the limitations of the independent claims, then any claim depending from the independent claim is nonobvious. See In re Fine, 5 USPQ2d 1596 (Fed. Cir 1988).

Given that Leak et al. fail to cure the noted deficiencies of Bien, the obviousness rejection under 35 U.S.C. § 103(a) based on the combination of Bien with Leak et al. is untenable and should be withdrawn.

Claims 2-3 and 19-21 stand rejected under 35 U.S.C. 103 as being unpatentable by U.S. Patent 5,704,929 to Bien in view of U.S. Patent 5,723,884 to Osborn, III et al. Applicants respectfully **traverse** this rejection to the extent it might apply to the claims, as amended.

As is noted above and continuously noted by the Applicants, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Further, Bien lacks the teachings of having a first fastener component on both wings or flaps with a cooperating fastener component on both wings or flaps, one of which is capable of interengaging one of the first fasteners. Osborn, III et al. fail to cure these deficiencies of Bien.

The portion of Osborn, III et al. relied upon by the Examiner, Figures 44-45, teach placing a hook material on the wings or flaps to engage the undergarment. However, Osborn, III et al. fail to teach that the hook material can engage the other flap, in particular a cooperating fastener on the other flap, as required by the present claims. Further, the hooks of Osborn, III et al. are located and designed to engage the elastic of the undergarment, as is set forth in column 50, line 55 - column 53, line 39. Osborn, III et al. do not teach having the flaps or wings in contact with each other such that one mechanical fastener will engage with a cooperating fastener on the other wing or flap.

In order to establish a prima facie case of obviousness, there must be some motivation or suggestion to modify the references and there must be some reasonable expectation for success. Given that the function of the flaps or wings in Osborn, III et al. is to physically attach the flaps or wings to the undergarment, without overlapping the flaps or wings, and the function of the flaps or wings in Bien (Mattingly) is to surround the undergarment without physical attachment, the purposes of the wings or flaps in Bien and Osborn, III et al. are different and one skilled in the art would not have been motivated to combine the teachings of Bien with Osborn, III et al., as the Examiner has done.

Claims 1-9 and 17-28 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent 6,843,785. Applicants respectfully traverse this rejection.

Applicants point out that the claims of U.S. Patent 6,843,785 are directed to **a process of attaching the sanitary napkin to an undergarment**. In clear contrast, the claims of the present application are directed to **a sanitary napkin with a garment attachment system**. The Examiner has not provided any reasons why the process of the claims of the '785 patent render the sanitary napkin claims of the present application obvious. The Examiner merely states that the claims of the present application are generic or are broader than those of the '785 patent. Applicants do not understand how the sanitary napkin claims of the present application are broader than the process claims of the '785 patent. The Examiner, in response to this argument, states that claims of the present application are broader than the claims of the '785 patent.

Applicants point out that the claims of the '785 patent are directed to a process of using the wing structure of a sanitary napkin, and not to the product per se. In clear contrast, the claims of the present invention are directed to a product, and not to a process of using that product. Surely if the claims of the '785 patent were presented in this application, the Examiner would have required a restriction as being directed to different classes of invention. Applicants will, however, file a terminal disclaimer upon finding allowable subject matter in the present application.

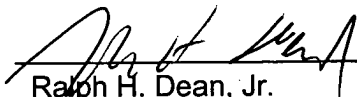
Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3892.

Respectfully submitted,

YVETTE L. HAMMONDS ET AL.

By:



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Appl. No. 10/037,278
Amdt. dated May 25, 2006
Reply to Office Action of January 25, 2006

CERTIFICATE OF MAILING

I, Judith M. Anderson, hereby certify that on May 25, 2006 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: *Judith M. Anderson*
Judith M. Anderson



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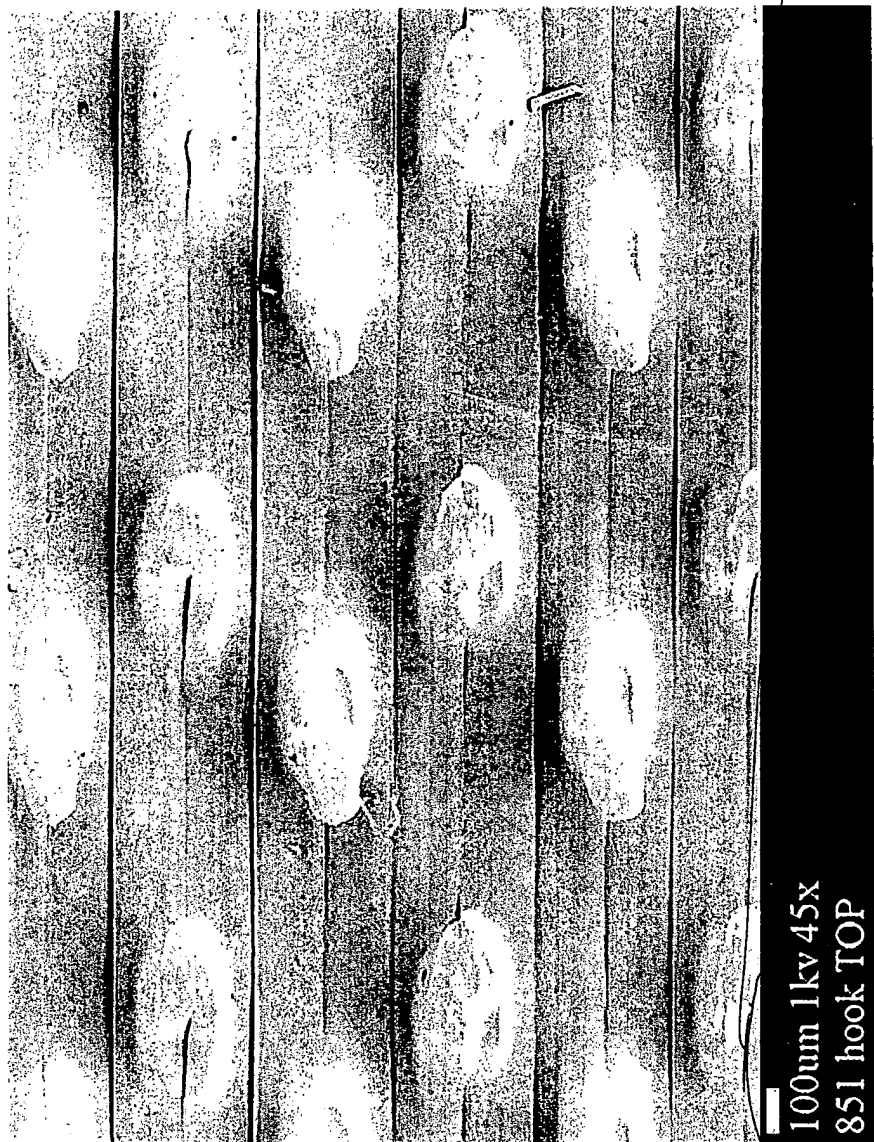
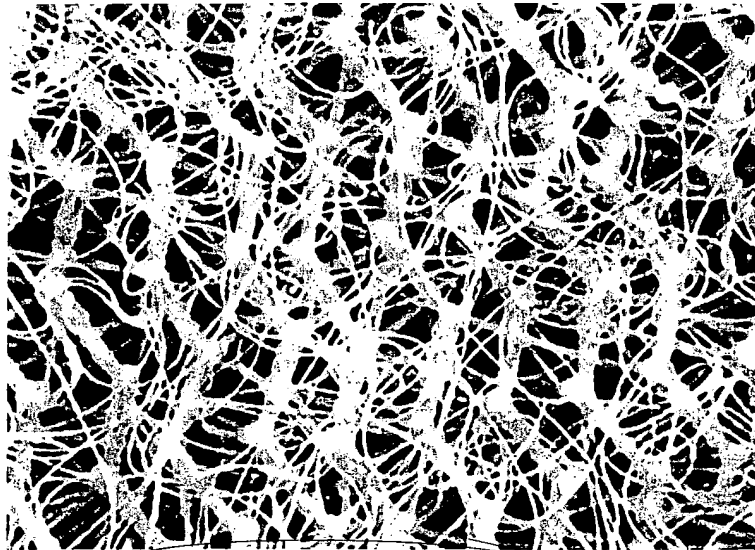


FIG. 5A



Remove

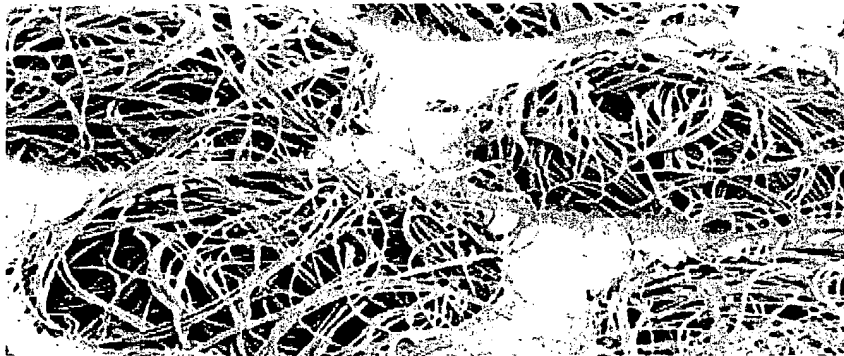
FIG. 5B



Guilford Woven Loop

Remove

FIG. 6



Nonwoven PUB Loop Dots

Remove

FIG. 7